

White-Collar Crime & Corporate Investigations Monthly Newsletter

PREVENTION OF MONEY LAUNDERING ACT

CBI COURT MUST TRANSFER SCHEDULED OFFENCE CASE TO SPECIAL COURT, PMLA ON ED'S APPLICATION

In this case, the Directorate of Enforcement ("ED") filed an application under S. 44(1)(c) of the Prevention of Money Laundering Act, 2002 ("PMLA") (which provides for committal of the case relating to the scheduled offence to the Special Court under the PMLA) before the CBI Court seeking transfer of the scheduled offence case under the Prevention of Corruption Act ("PC Act") before it to the Special Court designated under the PMLA. The **Madras High Court** relying upon the Supreme Court's decision in **Rana Ayyub vs. Directorate Enforcement**, (2023) 4 SCC 357 reiterated that the trial of scheduled offence, in so far as the territorial jurisdiction is concerned, should follow the trial of the money laundering offence. Based thereon, the Court set aside the contrary decision of the CBI Court which rejected ED's above application under S. 44(1)(c) of PMLA. It was held that S. 44(1)(c) is mandatory in nature and the CBI Court had no other option than to transfer the scheduled offence case to the designated Special Court under PMLA.

However, in the facts of the present case, the Special Court under the PMLA was not a designated court under the PC Act, while, the CBI Court incidentally was a designated court under the PMLA. The Court posed a question that where the scheduled offence under a special act is being tried by a special court under such act (i.e. PC Act), whereas the PMLA court is not a designated court under the PC Act, then in such case, whether the PMLA court be impliedly vested with the jurisdiction to try the scheduled offence under PC Act upon the case being transferred to it. Following the Supreme Court's decision in a similar case **Assistant Director, ED vs. Inspector of Police (SLP Diary No. 18882 of 2022)**, the High Court transferred the PMLA case to the CBI Court trying the offence under the PC Act, however, the Court kept the larger issue open to be decided in an appropriate case.

[Deputy Director vs. Deputy Superintendent of Police & Ors.](#)

ENTIRE FUNDS IN ACCOUNT CANNOT BE PRESUMED PROCEEDS OF CRIME WHEN PREDICATE OFFENCE INVOLVES A MUCH SMALLER SUM; ADJUDICATING AUTHORITY UNDER

PMLA CANNOT ORDER PARTIAL DEFREEZE TO MEET OPERATIONAL EXPENSES

In this case, the ED filed a writ appeal challenging a Single Judge's order, in relation to an order for freezing of accounts passed by the Adjudicating Authority under S. 17(1A) of PMLA whereby it permitted the Respondent to disburse employees' salaries from frozen bank accounts. The Single Judge, while refusing to interfere with the freeze order, relegated the Respondent to the Adjudicating Authority to contest the freezing of accounts. The Division Bench of the **Karnataka High Court** dismissed the appeal filed by the ED noting that:

- the scheduled offence involved a relatively small amount compared to the entire amount available in the Respondent's account which was frozen. Therefore, ED's contention that the entire amount represents proceeds of crime cannot be accepted. This was based on Supreme Court's findings in **Vijay Madanlal Choudhary & Ors. v. Union of India & Ors.**, (2023) 12 SCC 1 that proceeds of crime must be directly linked to the scheduled offence and only such property which is derived from criminal activity qualifies as proceeds of crime. Further, PMLA authorities cannot act against any person for money laundering merely on assumption; a scheduled offence must be formally registered with the police.
- The Adjudicating Authority under S. 8 of the PMLA does not possess the power to issue interim directions for partial de-freezing to meet operational expenses such as employee salaries.

[Directorate of Enforcement vs. Zo Pvt Ltd](#)

SERVICE OF SHOW CAUSE NOTICE AND RELIED UPON DOCUMENTS BY EMAIL ARE VALID UNDER PMLA REGULATIONS; ADJUDICATING AUTHORITY UNDER PMLA CAN DECIDE AS TO ITS SUFFICIENCY AND SERVICE

In a writ petition seeking supply of all Relied Upon Documents ("RUDs") and quashing of a show cause notice issued under S. 8(1), PMLA for retention of movable properties seized by ED under S. 17 of the PMLA, the **Calcutta High Court** held that service of notice through electronic mode was valid. Such

finding was based on Regulation 13(11) of the Adjudicating Authority (Procedure) Regulations, 2013 which provides that electronic service of summons or notices via modes prescribed under Section 13 of the Information Technology Act, 2000 is deemed valid service. The Court disposed of the writ petition observing that it is upon the Adjudicating Authority to decide whether the documents supplied to the Petitioner are the only RUDs or whether the complete RUDs are not served upon the Petitioner. Further, directions were

issued to the Adjudicating Authority to first determine whether the documents requested by the Petitioner constitute RUDs and, if so found, to direct ED to supply the same to the Petitioner within 2 weeks, with a further direction that the Petitioner be afforded an opportunity to file a supplementary reply within 2 weeks of such supply.

[Dipak De vs. Union of India & Ors.](#)

BHARATIYA NAGARIK SURAKSHA SANHITA

NO AUTOMATIC BAIL UNDER S. 479, BNSS AFTER EXPIRY OF STATUTORY DETENTION PERIOD

The *High Court of Jammu & Kashmir and Ladakh* dismissed a bail application filed under S. 483 of the Bharatiya Nagarik Suraksha Sanhita (“BNSS”) by the Applicant/ Accused charged under Sections 8, 21, 29, and 60 of the Narcotic Drugs and Psychotropic Substances Act (“NDPS Act”). The bail application was filed on grounds of prolonged incarceration of over 7 years, contradictory prosecution witnesses statements, and entitlement to bail as a first-time offender under the first proviso to S. 479 of the BNSS (*which entitles a first time offender to be released on bail if he has undergone one-third of the maximum punishment for the offence under which he is charged*). Under second proviso to S. 479, the Court can order continued detention of an undertrial who has

undergone one-half of the maximum punishment, after hearing the Public Prosecutor and recording reasons in writing or, the Court can release him on bail bond instead of personal bond.

The Court observed that length of period of custody, filing of chargesheet, etc. are not considerations for grant of bail under S. 37 of the NDPS Act. While interpreting S. 479, BNSS, the Court applied the principle of harmonious construction to both provisos contained in this provision, and held that the first proviso to S. 479 of the BNSS creates only an eligibility for consideration and not an indefeasible entitlement to bail and that the court's discretion provided for under the second proviso also exists in cases where the first proviso is invoked.

[Gurjit Singh vs. Narcotics Control Bureau, Jammu Zone](#)

CODE OF CRIMINAL PROCEDURE

HIGH COURT TO CONSIDER OVERALL CIRCUMSTANCES LEADING TO REGISTRATION OF CASE AND MATERIALS COLLECTED DURING INVESTIGATION WHEN EXERCISING JURISDICTION U/S. 482 OF CRPC

The *Supreme Court*, while hearing an appeal against an order of the Jharkhand High Court dismissing the appellant's petition filed under S. 482 of the Code of Criminal Procedure, 1973 (“CrPC”) for quashing of a Magistrate's summoning order, held that the High Court, while exercising its jurisdiction under S. 482 of the CrPC and Article 226 of the Constitution of India, need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case, as well as the materials collected during the course of

investigation. The Supreme Court reiterated the law on quashing of an FIR or criminal proceedings particularly on grounds of frivolous, vexatious, or malicious proceedings. It was held that in such cases the court is duty bound to examine the matter with greater care, look into attending circumstances emerging from the record of the case, over and above the averments, and if need be, try to read between the lines. Noting the above, the Supreme Court observed that the complaint contained only bald allegations that did not even *prima facie* disclose the commission of alleged offences and consequently quashed the summoning order as well as the order passed by High Court upholding the same.

[Sujoy Ghosh vs. State of Jharkhand & Anr.](#)

MISCELLANEOUS

INCARCERATION WITHOUT TRIAL AMOUNTS TO A PUNISHMENT

The **Supreme Court**, while hearing a challenge to an order of the Punjab and Haryana High Court rejecting bail, held that incarceration without trial amounts to a punishment. The Supreme Court observed that the prosecution has not yet examined any of the 23 witnesses in its case against the

Appellant and almost two years have passed since the Appellant was arrested without trial having commenced and conclusion thereof nowhere being in sight. Based on the aforesaid circumstances, the Supreme Court held that further detention of the Appellant pending trial is not necessary and granted bail.

[Pradeep Kumar Banu vs. State of Punjab](#)

Disclaimer: This newsletter does not purport to be and should not be treated as professional guidance or a legal opinion on any subject. The information has been compiled from different sources and does not reflect the opinions/views of DSK Legal. If you no longer wish to receive such emails from us, feel free to write to us at Knowledge.Management@dsklegal.com. Thank you for your cooperation and understanding.

White-Collar Crime and Corporate Investigations Practice

We have a skilled team specialized in criminal law, corporate/ transactional law, Intellectual Property and technology law, with considerable experience in criminal defence and regulatory enforcement.

Our knowledge of the enforcement landscape and understanding of the approach employed by regulators and investigating agencies enables us to anticipate the litigation trajectory and take steps to avoid/mitigate liability where possible.

The WCC team also works closely with the larger litigation practice to combat the substantial civil litigation risks that often accompany criminal and regulatory issues.

Competencies

Our subject matter competencies include the following:

- Fraud and Business Crime
- Money Laundering and FEMA
- Anti-Bribery, Anti-Corruption, and Investigations
- Securities Fraud
- Data Protection and Cyber Security
- Licensing Control
- Sanctions

Agencies/Authorities

We have represented clients before the following agencies:

- Directorate of Enforcement (ED)
- Central Bureau of Investigations (CBI)
- Serious Fraud Investigation Office (SFIO)
- Crime Branch/ Economic Offence Wing (EOW)
- Police Cyber Units
- Adjudicating Authorities and Appellate Tribunals under PMLA
- State Adjudicating Authorities (appointed under the Information Technology Act, 2000)
- Securities and Exchange Board of India (SEBI)
- Reserve Bank of India (RBI)
- Directorate of Revenue Intelligence (DRI)

Key Contacts:



Mr. Vikrant Singh Negi | Partner
vikrantsingh.negi@dsklegal.com
+91 99870 25971



Ms. Ekta Tyagi | Partner
ekta.tyagi@dsklegal.com
+91 98200 71781

Contributors:

Pratik Thakkar, Anjali Shah, Priyamvada Singhania, Sneha Barange, Sourabh Arora and Parag Kabra.